

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
HOME RULE ADVISORY GROUP**

**MINUTES
July 23, 2014**

CHAIR

Dr. Joseph Lyou, Governing Board member

MEMBERS

Present: The following members participated from Conference Room CC-8 at SCAQMD: Dr. Elaine Chang; Mike Carroll; Curt Coleman; Jayne Joy; Bill LaMarr; Art Montez; Terry Roberts; David Rothbart; Lee Wallace; and Mike Wang. The following members participated by conference call: Chris Gallenstein (CARB), Larry Rubio (Riverside Transit Agency), and Bill Quinn (CCEEB). Rongsheng Luo (SCAG) and Enrique Chiock (Breathe L.A.) participated from SCAG's L. A office.

Absent: Elizabeth Adams and Joy Langford

AQMD STAFF

Henry Hogo, Naveen Berry, Ian MacMillan, Jill Whynot, Susan Nakamura, Philip Crabbe, Bill Wong, and Marilyn Traynor

OTHER ATTENDEES

Mark Abramowitz (Board Consultant to Dr. Lyou); Dan McGivney (So Cal Gas & SDG&E); Noel Muyco (So Cal Gas & SDG&E); Tom Gross (SCE); Peter Okurowski (AAR); and Kris Flaig (City of Los Angeles/Sanitation).

WELCOME/INTRODUCTIONS

The meeting was called to order at 10:00 a.m. by Dr. Joseph Lyou, Chairman. Other participants at the meeting were: Dr. Elaine Chang (SCAQMD); Bill Wong (SCAQMD); Mike Carroll (Latham & Watkins on behalf of the Regulatory Flexibility Group); Curtis Coleman (Southern California Air Quality Alliance); Jayne Joy (Eastern Municipal Water District); Bill LaMarr (California Small Business Alliance); Art Montez (AMA International); Terry Roberts (American Lung Association of California); David Rothbart (Los Angeles County Sanitation Districts); Lee Wallace (So Cal Gas & SDG&E); and Mike Wang (WSPA). The following members participated by conference call: Chris Gallenstein (CARB), Larry Rubio (Riverside Transit Agency), and Bill Quinn (CCEEB). Rongsheng Luo (SCAG) and Enrique Chiock (Breathe L.A.) participated from SCAG's L. A office.

APPROVAL OF MINUTES

On motion of David Rothbart, and seconded by Jayne Joy, the minutes of the June 18, 2014, meeting were unanimously approved without objection.

TECHNOLOGY R&D AND CERTIFICATION PROCESS

At the last HRAG meeting, Mr. Montez and others expressed concern with the lengthy CARB certification process and the potential to hinder the development of new technologies. Dr. Lyou asked staff to provide an update to the HRAG on this subject. In response to Dr. Lyou's request,

Henry Hogo (SCAQMD's Assistant Deputy Executive Officer, Science & Technology Advancement) provided the following update which includes a discussion of the SCAQMD's role in new technology development and early commercialization of new technologies:

Background

The state established the SCAQMD's Clean Fuels Program and Technology Advancement Office (TAO) in 1988. TAO receives approximately \$12 million for research and development (R&D) programs from funds received through a \$1 motor vehicle registration fee. These R&D programs include hydrogen and fuel cell technologies, natural gas engine technology and infrastructure, battery electric vehicles, plug-in hybrid electric vehicles and related fueling infrastructure. A summary of the programs that have been funded can be found in the Technology Advancement Annual Report which SCAQMD is required by law to submit to the state legislature annually (the Technology Advancement Annual Report can be found at: <http://www.aqmd.gov/docs/default-source/technology-research/annual-reports-and-plan-updates/2013-annualreport-and-2014-plan-update.pdf?sfvrsn=5>).

The responsibility of the Technology Advancement Office and Clean Fuels Program is to advance and to commercialize new engine and mobile source control technologies as early as possible.

In the past, TAO has funded natural gas refueling stations and is currently focused on electric charging, in particular, electric charging stations at work places. TAO has also funded approximately a dozen hydrogen refueling stations throughout the South Coast region. CARB and the Energy Commission are working on increasing the number of hydrogen refueling stations in California. Hyundai and Honda are working on commercially available hydrogen fuel cell vehicles which are currently being field tested.

Certification

When CARB and EPA establish new emission standards, they recognize that engine manufacturers and automobile manufacturers need a period of time to develop the engine to meet the emission standards. Typically, the lead time is around four years. For passenger vehicles, the engine is placed on a dynamometer and run for 2,000 to 4,000 hours to make sure that the engine is durable and that emission standards are met. Once the engine has proven to be durable, the engine is placed in the car, and the car goes through safety crash testing in order to meet the Transportation Safety Board requirements for a safe vehicle. The entire process can take as long as 8 to 10 years before the car is actually commercialized. Once the vehicle is commercialized, the automobile manufacturer submits the emissions paperwork to U.S. EPA for certification (SCAQMD is not involved in this process). CARB similarly has a certification section located in El Monte that also reviews all of the certification information submitted to EPA. The engine or automobile manufacturers have to meet the regulatory certification procedures provisions for the state of California to receive CARB certification. No vehicle can be sold in California without this certification. Vehicles that are more than 8,500 pounds gross vehicle weight undergo two types of certification processes. The first is an incomplete vehicle certification process, typically done by the engine manufacturers where the engine is placed on a dynamometer and is run constantly for at least 2,000 hours for performance testing. The second certification process is a complete vehicle certification process similar to the passenger car certification process. To be certified, a vehicle must demonstrate that its exhaust complies with the emission standards. Due to the cost, only a limited number of R&D engines go through the certification process.

Discussion

David Rothbart asked if there are sufficient clean technologies currently available to reach attainment for ozone. Mr. Hogo emphasized that there is a need for additional cleaner combustion engines as well as zero emission and near-zero emission technologies that are 90% cleaner than today's level. Mr. Hogo added that SCAQMD is working with the Energy Commission and the Gas Company on the development of a 0.02 gram/bhp-hr NOx natural gas engine which could be commercialized in the next three to four years. Mr. Rothbart asked if new alternative technologies are available to reduce diesel risk. Mr. Hogo responded that, although diesel risk has been reduced over time, zero emission technologies and alternative fuels can help reduce diesel particulate matter.

Bill LaMarr asked if the R&D funding is solely for mobile sources. Mr. Hogo responded that, although the primary focus is on mobile sources, there is a nominal amount of monies available for stationary source technology R&D. Mr. LaMarr asked if the black box is primarily stationary sources. Mr. Hogo responded that the black box is primarily mobile sources (both on-road and off-road).

Art Montez asked if there are opportunities to expedite the certification process without sacrificing the quality of the work. Mr. Hogo responded that CARB has been streamlining their certification process. However, because SCAQMD is not involved in the certification process, he would have to defer to CARB. Mr. Montez asked if there are incentives provided to independent truckers for the purchase of newer technology trucks. Mr. Hogo responded that TAO has helped fund close to 3,000 trucks with the Proposition 1B funding. (Note: Since the meeting, Mr. Hogo confirmed that over 4,500 trucks (drayage and non-drayage) have been funded through Proposition 1B.) Mr. Montez asked if public agencies are required to use cleaner technology vehicles in their fleets. Mr. Hogo responded that Rule 1191 regulates passenger cars and public fleets. He added that the six major transit operators in the South Coast region run on alternative fuel (approximately 3,500 natural gas transit buses), and the City of Los Angeles parking enforcement staff uses Honda Civics run on natural gas and Honda hybrids. He noted that SCAQMD vehicle fleet is alternative fuel at this time, and many of the City of Los Angeles refuse trucks run on natural gas. Ms. Joy emphasized that other organizations and utilities may be reluctant to switch over to alternative fuel fleets if the infrastructure is not already in place.

Mike Wang noted that the lengthy certification process for R&D technology is not necessarily due to bureaucratic inaction. He explained that technology cannot be forced beyond the margins of what is known for science and chemistry. He also noted that the Clean Air Act requires that the emission reductions be permanent which is more difficult to sustain.

Mike Carroll was concerned that the high level of sophistication of the California agencies unintentionally delays the use of new, lower-cost technologies. He explained that the technologies may be known to reduce emissions but certification is delayed because the exact emission benefits are unknown at the time or that the reductions may not be exactly at the target level yet.

UPDATE ON PROPOSED RULE 1304.2

At the last HRAG meeting, Mr. Carroll requested an update on Proposed Rule 1304.2, and Dr. Lyou asked staff to provide an update to the HRAG at the July meeting.

Naveen Berry (SCAQMD's Planning and Rules Manager) provided the following update on proposed Rule 1304.2:

Background

On September 6, 2013, SCAQMD's Governing Board adopted Rule 1304.1 which provides PM, NOx, SOx, and VOC offsets to repowers for a fee. After the shutdown of San Onofre Power Plant and because of the limited amount of available offsets, there was a need for a contingency plan to be in place. On February 7, 2014, the SCAQMD Governing Board directed staff to proceed with developing Proposed Rule 1304.2 which will allow power plants to access the SCAQMD's Internal Offset Account to meet the existing Regulation XIII offset requirements by paying mitigation fees. Power plants accessing SCAQMD's offsets can be located at a new site or an existing power plant expanding beyond its existing permitted capacity and can be either an investor-owned utility (IOU), regulated by the California Public Utilities Commission (CPUC) and licensed by the California Energy Commission or a municipal utility (MUNI). The facilities will have to meet the Regulation XIII Best Available Control Technology (BACT), Best Available Retrofit Control Technology (BARCT), and other requirements. Proposed Rule 1304.2 will not change the existing Regulation XIII offset requirements but will make the SCAQMD's internal offsets available to the power plant operators if certain requirements are met.

Proposed Rule 1304.2 will address two key concerns regarding natural gas power plant siting in SCAQMD: (1) seven plus years are needed for power plant permitting, procurement, and construction completion and (2) the non-availability of offsets in the form of Emission Reduction Credits (ERCs) in the open market for SOx and PM10. Under Proposed Rule 1304.2 a power plant can undergo its permitting process in order to be ready for construction; however, SCAQMD's offsets will not be granted until approved by the CEC and a CPUC-approved long-term contract is awarded. Proposed Rule 1304.2 will: promote preferred resources consistent with CPUC loading order, CEC, CARB AB 32 Scoping Plan, and SCAQMD's energy policy. Proposed Rule 1304.2 will facilitate grid reliability.

The fee concept for Proposed Rule 1304.2 will be similar to Rule 1304.1 where the operators can pay an annual fee or a single up-front fee for the level of offsets that are encumbered from the SCAQMD internal bank. Fee proceeds from Proposed Rule 1304.2 will be invested in air pollution improvement strategies that are consistent with the Air Quality Management Plan and/or local impacts. The plan is to expend the fees in impacted surrounding communities with an emphasis on preferred resources and with higher prioritization given to energy efficiency projects, demand response projects, energy storage projects, renewables, and low and zero emission vehicles and charging infrastructure.

SCAQMD has held informal meetings with key stakeholders (representatives from the environmental community, CCEEB, SCE, SoCalGas, DWP, and others) to discuss implementation strategy for Proposed Rule 1304.2. Also a Proposed Rule 1304.2 Working Group meeting was held on July 10, 2014 (Attachment 1). Staff plans to hold a public workshop in fall 2014.

Mr. Berry noted that the NGOs do not want any of the new generation or power plants sited in environmental justice areas. He added that SCAQMD staff will be considering: (1) how to site the new power plants so as to avoid environmental justice (EJ) areas and (2) how to funnel the offset fees back into the impacted EJ communities.

Discussion

Mr. Rothbart asked if the rule staff report will include a historical draw of internal offsets which can be used to predict future needs. Mr. Berry responded that the staff report will address those issues. Dr. Lyou noted the importance of essential public services and small business stakeholders meeting with SCAQMD staff to discuss and plan for future needs.

Mr. Montez emphasized that the fees collected should be used to fund programs in the impacted EJ communities, not the wealthier communities. Mr. Berry responded that SCAQMD staff has received that same message from other stakeholders and that historically the Board has directed SCAQMD staff to use these types of fees to fund programs in the impacted EJ communities. Mr. Carroll warned that careful consideration will need to be given on how to mitigate the impacts to the EJ community. He explained that, in the current RFO, the utility and the ISO have been very specific that the generation needs to be located geographically in central and south Orange County, which is not necessarily the most disadvantaged EJ area. Tom Gross (SCE) agreed that there are EJ communities in other areas that are already severely impacted (where the incidence of childhood asthma is high) that could benefit from the fees that are collected.

Dr. Lyou asked if SCAQMD staff has considered how to set a price on the credits. Mr. Berry responded that the initial concept is to be in line with the Rule 1304.1 fee structure that was approved by the Board and based on the most recent ERC transactions. Mr. Coleman commented that the price should be set based upon the cost of obtaining the necessary mitigations. Mr. Carroll added that the cost of the fee will be built into the cost of electricity.

Mr. Carroll emphasized the importance of moving forward expeditiously with Proposed Rule 1304.2 so that offsets will be available and to avoid potential litigation.

UPDATE ON OEHHA'S AIR TOXICS HOT SPOTS PROGRAM GUIDANCE MANUAL FOR THE PREPARATION OF RISK ASSESSMENTS

Ian MacMillan, SCAQMD's Program Supervisor, provided the following update on OEHHA's revised Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments:

Background

The Office of Environmental Health Hazard Assessment (OEHHA) has revised and is soliciting public comment on an update of its Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual) which was originally approved in 2003. The draft revised Guidance Manual relies on critical information from the following three Technical Support Documents (TSD's): (1) Noncancer Reference Exposure Levels (2008); (2) Cancer Potency Factors (2009); and (3) Exposure Assessment Methodology (2012). These three support documents have previously undergone public review, were approved by the state's Scientific Review Panel (SRP) on Toxic Air Contaminants, and were adopted by OEHHA for use in the Air Toxics Hot Spots Program.

Proposed revisions to the OEHHA Risk Guidance include:

Age Specific Factors

Based on the 2009 Cancer Potency Factors TSD, children are more susceptible to carcinogenic risks than originally thought in 2003.

Breathing Rate

Based on the 2012 Exposure Assessment Methodology TSD, the breathing rate has been modified for different age groups and is higher for children than originally thought in 2003.

Exposure Duration

Based on the 2012 Exposure Assessment Methodology TSD, the minimum exposure duration that should be considered in a risk assessment has been reduced to two months instead of nine years as specified in the 2003 Guidance Manual. In addition, individual residential exposure durations have been reduced from 70 years to 30 years, and worker exposure durations have been reduced from 40 years to 25 years.

Because of the revised method for calculating risks, residential risk may increase approximately three times higher than before, even though pollutant concentrations may show a significant decrease. For example, preliminary data from the MATES IV Study shows that risks are approximately 420 in a million on average, compared to MATES III risk which was around 1200 in a million on average. The decreased risk shown in MATES IV is attributed to lower concentrations of toxics pollutants primarily from reducing the emissions of diesel particulate matter. With the new guidelines, the MATES IV risk would go back up to approximately 1200 in a million. Further, with the new guidelines, cancer burden impacts to a population could increase more than three-fold.

OEHHA's new calculation method could affect SCAQMD's risk based programs. For instance, public notifications could increase under Rule 1402. Some facilities that may have already gone through the health risk assessment process may have to go through the process again if the risks are now above the threshold. Gas stations and auto body shops may have difficulty obtaining permits based on throughput level. Under CEQA, additional EIRs may need to be conducted because of the increased exposure duration. SCAQMD staff will investigate whether some of these changes can be addressed industry-wide rather than on a project-specific basis.

SCAQMD staff plans to rely on risk management to address the changes in OEHHA's risk assessment methodologies. Other actions SCAQMD staff may pursue include: working with state agencies to develop statewide toxic communication tools to explain OEHHA procedure changes; maximizing programmatic risk reduction opportunities through source-specific rulemaking; developing a work plan to phase in and to prioritize implementation of the revised OEHHA procedures.

The public comment period for the draft revised Guidance Manual is scheduled to end on August 4, 2014 (subsequently the comment period was extended to August 18, 2014). The revised Guidance Manual is tentatively scheduled to be reviewed by the Scientific Review Panel in November 2014 (presentation: Attachment 2).

Discussion

Mr. Wang inquired if references to a 70-year lifetime exposure risk in SCAQMD rules would be changed and suggested that SCAQMD could more easily manage the risk management options using a range of risks. Mr. Wang added that, for purposes of uncertainty analysis, a range of risk would give the risk assessor and the risk manager a more realistic viewpoint. Susan Nakamura responded that, under the revised guidelines, the new lifetime exposure risk for the residential sensitive receptor is 30 years and that she thought our rules referenced OEHHA's guidance. Ms. Nakamura added that SCAQMD plans to open up Rule 1402 and possibly Rule 1401 to review the

timing requirements for HRAs, risk reduction plans, and inventories. Mr. Wang asked if SCAQMD would consider using the terms “calculated risk” and “newly calculated risk” to differentiate between the old and new guidelines. Dr. Lyou suggested that Mr. Wang present his ideas to SCAQMD and OEHHA for consideration.

Mr. Rothbart asked how SCAQMD plans to address the issue of stationary sources that are already using BACT but may be unable to obtain permits because the new calculation method will show that their cancer risk has tripled. Ms. Nakamura responded that these issues will most likely be resolved through rulemaking on a source specific basis; however, staff is still discussing different options.

Mr. Quinn noted that CCEEB and its members believe that there are two key issues--risk management, and risk communication. He explained that approximately 2,888 sources have decreased their emissions by 80% since 1990 and this should be publicized. Also, he stressed the importance of CARB, SCAQMD, and the other air districts working together to resolve these issues.

Lijin Sun (SCAG) asked whether the workplan, with respect to CEQA, will propose any preliminary mitigation measure language. Mr. MacMillan responded that there are already existing tools and guidance, such as SCAG’s RTP, that can be used; however, SCAQMD staff has not discussed whether new mitigation measures will be proposed yet.

Dr. Lyou closed the discussion by explaining that calculation methods have changed because science has improved; and the risk, particularly to children, may have been under estimated in the past. He noted that SCAQMD will have to cautiously approach how to handle the new information presented by OEHHA.

LEGISLATIVE UPDATE

Philip Crabbe reported on items that were discussed at the Legislative Committee meeting on July 18, 2014.

Federal

The consultants provided the following report to the Legislative Committee on July 18, 2014. SCAQMD staff and key staff from the offices of various Senators, Congressmen, and Congresswomen met to discuss the MAP-21 transportation bill, the Diesel Emission Reduction Act (DERA) funding, and SCAQMD’s legislative proposals and priorities which focus primarily on efficient freight transportation and air quality issues.

The House Appropriations Committee approved its version of the Interior, Environment Appropriations bill for FY 2015. The bill includes language on EPA targeted airshed grant DERA funding and adds \$10 million to the existing \$30 million of DERA funding already provided. The newly added \$10 million would be distributed on a competitive basis to the nation’s top five most polluted areas with regard to ozone or PM_{2.5} federal standards. The bill is expected to be approved by the full House before the August recess.

The Senate is likely to vote on the House highway transit fund bill soon. Senator Boxer and others are concerned that there are no policy fixes at this point. The funding patch for the highway trust fund will likely pass before the deadline, which will extend transportation funding through May

2015. Although the House has passed a number of appropriations bills, the Senate has not taken much action in this regard. The expectation is that, after the November elections, the Senate will pass a continuing resolution or some of the pending appropriations bills to help fund the government.

State

The consultants discussed the following bills at the Legislative Committee meeting on July 18, 2014:

AB 69 (Perea)

This bill will delay the inclusion of motor vehicle fuels within the state cap and trade program for a three-year period. It is expected that after the state legislative recess ends on August 4, 2014, that the bill will be sent to a policy committee; however, it is unlikely that the bill will get passed into law.

AB 2389 (Fox)

This bill, which was passed and signed by the Governor, will provide tax incentives for the aerospace industry and property tax incentives for electric battery manufacturers. The bill is seen as a large benefit to Tesla.

SB 1309 (Steinberg/Gaines)

The bill is aimed at courting Tesla into building a battery factory in California. This bill is an intent bill only, but would provide financial incentives, such as tax credits, and/or regulatory and environmental streamlining for the creation of a factory.

AB 1102 (Allen)

This bill (beach fire rings) is scheduled to be heard in the Senate Appropriations Committee on August 4, 2014.

There are a number of existing bills that are focused on replacing the current \$11.1 billion water bond measure that is currently on the ballot. Negotiations between the Governor and the legislative leaders will continue until after the legislative recess ends.

Discussion

There was no discussion.

UPDATE REGARDING LITIGATION ITEMS AND RELATED EPA ACTIONS

Bill Wong provided the following update on the litigation report (Attachment 3):

Case No. 4 Utility Air Regulatory Group v. U.S. EPA. U.S. Supreme Court Case No.12-1146 (consolidated with 12-1272, 12-1248, 12-1254, 12-1268, and 12-1269)

The Supreme Court has ruled on the lawsuit brought by the Utility Air Regulatory Group and has determined that PSD (Prevention of Significant Deterioration) permitting requirements may not be triggered solely by the emissions of greenhouse gases. However, for sources that are in PSD “anyway,” the Supreme Court held that these sources could be made to comply with BACT. EPA had not yet determined the de minimus level of greenhouse gases that would trigger BACT.

Discussion

David Rothbart asked what EPA means by stating on their website, “they are awaiting further action by the U.S. Courts.” Mr. Wong was not aware of further action being taken by the U.S. Courts in terms of defining the de minimus level of greenhouse gases that would trigger BACT.

EPA AND FEDERAL ACTIVITIES

There was no EPA update.

CARB REGULATORY ACTIVITIES

Chris Gallenstein responded as follows to requests made by the HRAG members at the May 20, 2014, HRAG meeting:

Dr. Lyou had requested additional information on the Sustainable Freight Public Forum that was held on May 5, 2014.

Mr. Gallenstein responded that the themes of the forum were: jobs, economy, data gaps, complexity of the system, funding infrastructure, efficiencies, and technology assessments. Preliminary concepts of the strategy are scheduled to be released in the fall (meeting documents and videos are available at: http://www.arb.ca.gov/gmp/sfti/sfti_meetings_archives.htm).

Bill LaMarr had requested an update on the amendments to the ATCM for chrome plating and chromic acid anodizing facilities.

Mr. Gallenstein responded that CARB is currently performing testing, and regulatory activity is expected in 2015.

Joy Langford had requested an update on CARB’s regulatory/enforcement activities under AB 32. Mr. Gallenstein responded that, as of June 10, 2014, CARB had settled eight cases for a total of approximately \$572,200.

Mr. Gallenstein discussed the following items that are scheduled to go before CARB’s Board on July 24-25, 2014:

- Public Meeting to Consider Five Research Proposals
- Update to the Board on the Assembly Bill 8 Required Joint Evaluation Process of the Carl Moyer Program Being Conducted by the Air Resources Board and California Air Pollution Control Officers Association
- Update to the Board on the Revised Office of Environmental Health Hazard Assessment Health Risk Assessment Guidelines
- Update to the Board on the Air Resources Board’s Greenhouse Gas Measurement Program and the Megacities Project
- Update to the Board on the Status of the Compliance Offset Program Under the California Cap-and-Trade Program
- Update to the Board on San Joaquin Valley Sustainable Communities Strategies
- Update to the Board on the Proposed Re-Adoption of the Low Carbon Fuel Standard

These items are tentatively scheduled to go before CARB's Board September through December 2014:

- Minor Updates to the 1997 8-Hour Ozone Standard SIPs: Coachella Valley and Western Mojave Desert Ozone Nonattainment Areas
- Consider Approval of the Imperial PM2.5 Plan
- Proposed Adoption of a Rice Protocol for Cap and Trade Regulation (First Hearing of Two)
- Amendments to the LEV III and Hybrid Electric Test Procedures, Amendments to the Zero-Emission Vehicle Regulation, and Progress on the Advanced Clean Cars Program
- Proposed Adoption of a Revised Low Carbon Fuel Standard
- Alternative Diesel Fuel Regulation
- San Joaquin Valley 8-Hour Ozone Update

Discussion

There was no discussion.

CONSENSUS BUILDING

There was no report.

SUBCOMMITTEE STATUS REPORTS

A. Freight Sustainability (Lee Wallace).

Dan McGivney provided the following update on behalf of Mr. Wallace:

California Freight Mobility Plan (CFMP)

Caltrans is continuing to receive comments on the draft California Freight Mobility Plan (<http://dot.ca.gov/hq/tpp/offices/ogm/cfmp.html>). Public comment workshops are scheduled to occur throughout California between June 17 and July 24, 2014 (<http://www.dot.ca.gov/hq/paffairs/news/pressrel/14pr053.htm>).

2040 California Transportation Plan (CTP)

Caltrans is planning to release a draft of the CTP 2040 (The CTP 2040 can be found at: <http://www.dot.ca.gov/hq/tpp/californiatrnsportationplan2040/index.shtml>).

The goal for public release is February 2015. Caltrans set up seven focus groups to provide input on CTP 2040. Recruitment for the focus groups was accomplished by posting ads in the Community Volunteers and Jobs [ETC] categories on craigslist.org website. Comparing the input gathered from each of the seven focus groups revealed the following high-level, overarching comments:

- Funding is the biggest challenge facing the state.
- Travel time and cost are the primary factors influencing mode of travel and routes.
- Transit routes and schedules are unreliable and infrequent.
- Reduced fees and incentives are needed to make public transit a more viable choice.
- The existing transportation system should be maintained and restored before problems arise.

- Alternative transportation options should be explored and connectivity improved between different modes of travel to create an integrated and seamless system.

(The focus group summary report can be found at:

http://www.dot.ca.gov/hq/tpp/californiatrnsportationplan2040/Documents/index_docs/CTP_2040_FG_Summary_Rpt-Final_050614_posted_050714.pdf#zoom=85).

Caltrans has agreed to provide an update on the California Transportation Plan activity at the next HRAG Freight Sustainability Subcommittee meeting which will most likely be scheduled for late September (meeting has been scheduled for September 24 at 1:00 p.m. at SCAQMD, Conference Room CC-8).

B. Small Business Considerations (*Bill LaMarr*)

There was no report.

C. Environmental Justice (*Curt Coleman*)

There was no report.

D. New Source Review (*Bill Quinn*)

Mr. Quinn had no report but stated that the subcommittee may meet in the future to address Rule 1304.2 issues, if necessary.

E. Climate Change (*David Rothbart*)

Mr. Rothbart had no report but suggested the possibility of streamlining greenhouse gas reporting efforts among agencies (SCAQMD, CARB, and EPA). Mr. Coleman noted that the HRAG members could address their concerns to the Permit Streamlining Task Force Subcommittee, which Mohsen Nazemi may reinstate in the near future. Ms. Whynot added that, although SCAQMD has lobbied hard in the past to combine the reporting system with CARB and EPA, nothing has changed. Mr. Rothbart noted that there may be a possibility to reopen the subject because of the change in CARB's staff.

REPORT FROM AND TO THE STATIONARY SOURCE COMMITTEE

Susan Nakamura provided the update on behalf of Dr. Chang. She reported on the following items which are on the agenda for next Stationary Source Committee meeting on July 25, 2014:

- Rule 1153.1 – Emissions of Oxides of Nitrogen from Commercial Food Ovens
- Rule 1151 - Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations
- Rule 1110.2 – Status Update on Biogas Engine Technology/Rule Implementation Assessment
- Rule 1147 – NO_x Reductions from Miscellaneous Sources
- Status Report on Reg. XIII – New Source Review
- Update on the Check Before You Burn Program for the Wood Stove and Fireplace Change Out Voucher Incentive Program.

OTHER BUSINESS

There was no discussion.

PUBLIC COMMENT

There were no public comments.

ADJOURNMENT

The meeting was adjourned at 12:29 p.m. The next meeting of the Home Rule Advisory Group is scheduled for 10:00 a.m. September 17, 2014 (there is no meeting in August).

Proposed Rule 1304.2

Greenfield Electrical Generating Facility Fee For Use Of SO_x/PM₁₀ Offsets

Working Group Meeting

July 10, 2014



1

Background

- Rule 1304.1 applicable to Repowering of units at Existing power plants - Adopted 9/6/2013
- Provides PM, NO_x, SO_x and VOC Offsets to repowers for a fee
- Current dearth of PM, SO_x and NO_x ERCs available in the open market



2

Background (cont.)

- Promote preferred resources
 - CPUC Loading Order
 - CARB AB32 Scoping Plan
 - SCAQMD Energy Policy
- Facilitate grid reliability
- Assist in implementation of attainment strategy



3

Progress to Date

- Informal Meetings with key stakeholders since February 2014 Board Meeting:
 - SCLC
 - Refinery
 - CCEEB
 - SCE
 - SoCalGas
 - DWP
 - Independent Power Producers
 - Environmental Community Reps



4

Proposed Rule

Overview

- Require a Fee for SO_x/PM₁₀ Offsets obtained from District offset accounts for New Greenfield Electrical Generating Facility (GEGF) in SCAB
- Not mandatory to obtain offsets from District accounts
- Fee proceeds to be invested in air pollution improvement strategies consistent with the Air Quality Management Plan and/or local impacts



5

Proposed Rule

Definition Concepts

- GREENFIELD ELECTRICAL GENERATING FACILITY (GEGF)
 - constructed on a site not previously developed as a facility
 - an entirely new construction at an existing facility
 - increasing the capacity at an existing facility
 - Additional Criteria
 - generating electricity for its own use
 - for use pursuant to a contract
 - a municipal utility supporting its own native load
 - refinery co-generation unit included in the CPUC's LTPP.



6

Proposed Rule

Definition Concepts (cont.)

■ REFINERY CO-GENERATION

- Facility using refinery fuel gas as a source with a primary goal to provide 100% of the steam needed for refinery operations
- Generation of any excess electricity is included in the CPUC's LTPP

■ NATIVE LOAD

- Transmission Provider (typically a municipality)
- Included in the CEC* IRP
 - obligation to construct and operate the Transmission Providers system to meet the reliable electric needs of such customers.



* CEC reference to be removed based on working group

7

Requirements

■ GEGFs may reserve SOx and PM10 offsets from SCAQMD internal bank if the following conditions are met

- Sufficient credits for R1309 & R1304 Emitters*
 - SOx Set Aside = 50 lb/day
 - PM10 Set Aside = 420 lb/day
- Permit application(s) deemed complete
- Existing sources at GEGF meet BARCT or BACT
- Total use not exceeding R1315 Cap



* Historical Draw of Internal Offsets for SOx & PM10 (CY 2002-2011):
 SOx = 152 lb/day PM10 = 1,393 lb/day

8

Requirements

Contd.

■ GEGF shall receive SOx and PM10 offset

➤ Investor Owned Utilities (IOU)

- CEC Certified CEQA
- CPUC

➤ Municipalities

- CEC* Integrated Resources Plan
- Lead Agency Certified CEQA
- Local Municipal Approval with Public Process



* CEC reference to be removed based on working group

9

Key Provisions

- Annual Fee to be paid for the entire operational period of the new unit; or optionally a one-time single up front fee (GF_i)

- Offset Fee(s) (GF_i) to be paid for each pollutant (i) for each year that the offsets are encumbered by the GEGF

- The annual fee by pollutant type

- derived by applying the CY 2013 1.6% increase in the CPI rate to Rule 1304.1 fee rates
- adjusted annually by the Consumer Price Index



10

Payment Options

- **Single Upfront Payment Option**
 - Full fee due prior to PC
- **Annual Payment Option**
 - Only 1st year payment for offsets prior to PC
 - Credit applied to first year of operation
 - Annual payments start after first year of operation
 - For Multi-Phase/Block Projects
 - 2nd payment due for only operational units and prior to 2nd year of operation
- **EGFs may switch from annual to single payment at any time**
 - Previous payments credited toward balance



11

Refunds

- **To address grid reliability and investment risk concerns, rule allows:**
 - Full refund prior to commencement of operation
 - Cancellation of PC
 - Full refund for reduction in permitted generation capacity
 - Prior to Commencement of Construction
 - Includes Multi-Phase/Block repower projects



12

Use of Fees

■ Impacted Surrounding Communities, consistent with AQMP

- Emphasis on Preferred Resources
 - Energy Efficiency
 - Demand Response
 - Energy Storage
 - Renewables
- Low- or Zero-Emission Vehicles & Charging Infrastructure



■ Consistent with R1304.1 Once Approved

13

Key Issues

■ Inclusion of Refinery CoGen

- Criteria to ensure net localized emission reductions

■ Potential Siting in Environmental Justice Areas

- Criteria to prevent additional exposure
- Environmental benefits from offset fees

■ Native Load Determination for Muni

- Consistent with CPUC procurement policies



14

Rule Development

Proposed Schedule

Informal Meetings March - June 2014

Working Group Meeting July 10, 2014

Additional Working Group Meetings August 2014 – Rule Adoption

Public Workshop October 2014 – December 2014

Adoption Hearing 1st Quarter 2015



15

Back-Up Slides



16

Historical Draw on SCAQMD Internal Offset Accounts (CYs 2002 -2011)

Pollutant (lb/day)	Rule 1304(a)(2)	Essential Public Services	All Others	Total	Rule 1304(a)(2) ÷ Total
PM10	3,634	730	663	5,027	72%
VOC	2,513	1,770	4,743	9,026	28%
SOx	126	135	17	278	45%
NOx	0	4,937	5,035	9,972	0%



17

Formulas Annual Payment Option

≤ 100 MW cumulatively

Annual Offset Fee (GF_i) =

$$R_{iA1} \times OF_i \times PTE_{new_i}$$

> 100 MW cumulatively

Annual Offset Fee (GF_i) =

$$\left(\left[R_{iA1} \times \left(\frac{100}{MW} \right) \right] + \left[R_{iA2} \times \left(\frac{MW - 100}{MW} \right) \right] \right) \times OF_i \times PTE_{new_i}$$



18

Formulas

Single Payment Option

$\leq 100\text{MW}$ cumulatively

$$\text{Single Payment Offset Fee } (GF_i) = L_{iA1} \times OF_i \times PTE_{new_i}$$

$> 100\text{MW}$ cumulatively

$$\text{Single Payment Offset Fee } (GF) = \left(\left[L_{A1} \times \left(\frac{100}{MW} \right) \right] + \left[L_{A2} \times \left(\frac{MW - 100}{MW} \right) \right] \right) \times OF_i \times PTE_{new_i}$$



19

Offset Fee Formula (cont.)

Where;

- GF_i = Greenfield Offset Fee for pollutant (i); i = PM₁₀ / SO_x.
- R_{iA1} = Annual Fee Rate for pollutant (i), cumulatively 100MW or less (\$/pound per day) - see Table A1
- R_{iA2} = Annual Fee Rate for pollutant (i), cumulatively >100MW (\$/pound per day) - see Table A2
- R_{iL1} = Single Fee Rate for pollutant (i), cumulatively 100MW or less (\$/pound per day) - see Table A1.
- R_{iL2} = Annual Fee Rate for pollutant (i), cumulatively >100MW (\$/pound per day) - see Table A2
- MW = maximum unit MW rating
- PTE_{new_i} = potential to emit of new unit(s).
- OF_i = offset factor (see Table A1 and A2 for applicable rates).



20

Fee Rate Tables A1 and A2

TABLE A1 ≤ 100MW Pollutant (i)	Annual Offset Fee Rate (R_{iA1}) (\$ per lb/day)*	Single Payment Offset Fee Rate (L_{iA1}) (\$ per lb/day)*	Offset Factor (OF)
SOx**	806	20,133	1.0
PM10	1,013	25,310	1.0

TABLE A2 > 100MW Pollutant (i)	Annual Offset Fee Rate (R_{iA1}) (\$ per lb/day)*	Single Payment Offset Fee Rate (L_{iA1}) (\$ per lb/day)*	Offset Factor (OF)
SOx**	3,321	80,530	1.0
PM10	4,050	101,237	1.0



*Fees shall be adjusted annually by the CPI, consistent with the provisions of Rule 320

**For non-RECLAIM sources only

21

Sample Annual Fee Calculation (800 MW)

For PM10 Offsets ONLY - a separate computation must be performed for any SOx offsets obtained, as applicable:

- Pollutant i = PM10
- $R_{iA1} = R_{PM10A1} = \$1,013 / \text{lb per day annually}$
- $PTE_{\text{new}} = 800 \text{ lb / day}$
- $OF_i = OF_{PM10} = 1.0$

$$GF_i = R_{iA1} \times PTE_{\text{new}} \times OF_i$$

$$GF_{PM10} = R_{PM10A1} \times PTE_{\text{new-PM10}} \times OF_{PM10}$$

$$= \$1,013 \frac{\text{per year}}{\text{lb/day}} \times 800 \frac{\text{lb}}{\text{day}} \times 1.0$$

$$= \$810,400 / \text{year}$$



22

Sample Single Fee Calculation (800 MW)

For PM10 Offsets ONLY - a separate computation must be performed for any SOx offsets obtained, as applicable:

- Pollutant i = PM10
- $L_{iA1} = L_{PM10 A1} = \$25,310 / \text{lb per day}$
- $PTE_{new} = 800 \text{ lb / day}$
- $OF_i = OF_{PM10} = 1.0$

$$GF_i = L_{iA1} \times PTE_{new} \times OF_i$$

$$GF_{PM10} = R_{PM10 A1} \times PTE_{new-PM10} \times OF_{PM10}$$

$$= \$25,310 \frac{\text{lb}}{\text{day}} \times 800 \frac{\text{lb}}{\text{day}} \times 1.0$$

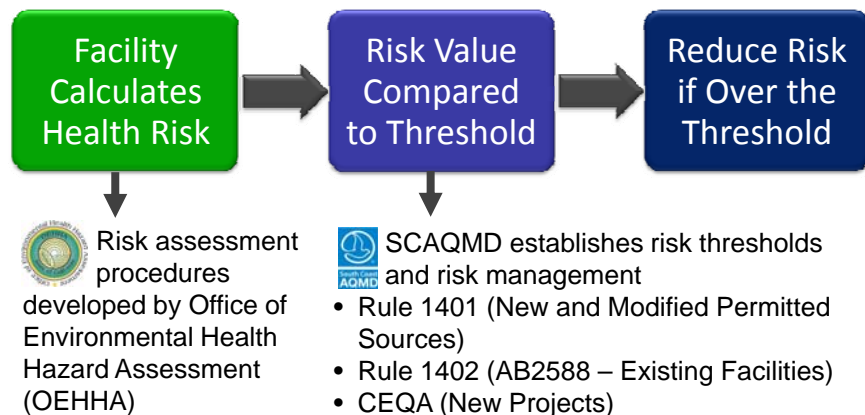
$$= \$20,480,000$$



Potential Impacts of New OEHHA Risk Guidelines on SCAQMD Programs

Cleaning the Air That We Breathe...

Overview Agency Responsibilities



OEHHA Guidance - Background

- OEHHA approved Health Risk Assessment (HRA) Guidance in 2003
- Scientific Review Panel (SRP) and OEHHA approved technical support documents
 - 2008 - Noncancer Reference Exposure Levels
 - 2009 - Cancer Potency Factors (age specific factors)
 - 2012 - Exposure Assessment (breathing rates and exposure duration)
- OEHHA revising HRA guidance to incorporate technical support document

OEHHA Risk Guidance Proposed Revisions

Age Specific Factors (2009 Cancer Potency Factors)

- Higher impacts to children

Breathing Rate (2012 Exposure Assessment)

- Modified for different ages (e.g., higher for children)

Exposure Duration (2012 Exposure Assessment)

- Reduced exposure duration (residential and worker)
- Lowest exposure period reduced from 9 years to 2 months



Result: Residential Risk ~3X Higher*

* Preliminary estimate/subject to change. Up to ~6X for multi-pathway.
Worker risks decline ~2%

Examples of Increased Risk at 3X's

Example	Cancer Risk from Current Guidelines (per million)	Approximate Risk from New Guidelines (per million)
MATES IV	422	1,266
San Bernardino Rail Yard – Max residential (2008)	2,500	7,500
Gas Station (Costco) – Max residential	15	45

Cancer Burden impacts may be larger (5-10x) than maximum cancer risk impacts

- 1 per million contour limit could extend 2-3x farther



Impact to SCAQMD Risk-Based Programs

- All risk-based programs will be affected
 - New and modified permits (R1401 and 1401.1)
 - Existing facilities (R1402 and some source-specific rules)
 - New projects (CEQA)

Potential Permitting Impacts Rule 1401

- Number of sources subject to public notification could be high
- Number of sources unable to obtain permits could be high
 - Throughput limits too low to operate
 - Control equipment unavailable or too costly
 - Examples include gas stations, auto body, soil remediation
- Significant increase in permit workload likely
 - Fewer facilities will be able to use screening analysis

Potential Existing Source Impacts Rule 1402

- Public notices
 - 2 to 3 times more facilities may be required to conduct public notices
 - 5 to 10 times more notices to households
- Risk management
 - ~80 percent of facilities with an HRA may need to update HRA
 - More facilities expected to be subject to risk reduction measures (R1402)
 - Industry-wide categories may be heavily impacted (e.g. >400 gas stations)

CEQA Program Impacts

- Intergovernmental Review
 - 6 months construction impacts from a typical 1-acre office project could cause significant risk
 - 1 lb/day of DPM for 6 months = risk > 10 per million
- Lead agency projects
 - 10 of 16 projects in two year sample period would have needed to upgrade to EIR's
 - Due to construction

Initial Staff Recommendations

- Rely on risk management to address changes in risk assessment methodologies
- Develop statewide toxic communication tools to explain OEHHA procedure changes
- Maximize programmatic risk reduction opportunities through source-specific rulemaking
 - Reduce administrative costs
- Develop a work plan to phase in and to prioritize implementation of the revised OEHHA procedures
 - Explore ways to minimize program implementation costs

STATUS REPORT ON LITIGATION
OFFICE OF GENERAL COUNSEL

DATE: July 9, 2014
TO: Home Rule Advisory Group
FROM: William B. Wong, Principal Deputy District Counsel
SUBJECT: Status Report Regarding Litigation

1. CASE: **Exide Technologies, Inc. v. South Coast Air Quality Management District, Los Angeles Superior Court Case No. BS146770**

NATURE OF CASE: On February 7, 2014, Exide filed a petition for writ of mandate and complaint for injunctive and declaratory relief challenging the amendments to Rule 1420.1 adopted January 10, 2014. The claims include alleged violations of the California Environmental Quality Act and arbitrary and capricious rulemaking. While Exide purports to only be challenging the negative pressure requirement, their CEQA arguments, if successful, could invalidate the entire rule.

STATUS: *(No change from last month.)* Exide has filed a motion for preliminary injunction to stay the effectiveness of the negative pressure requirements which becomes applicable April 10, 2014. The motion was heard by Judge Goodman on March 28, 2014. On April 7, 2014, the court denied the motion for preliminary injunction. We will keep you advised of any further developments in this case.

2. CASE: **U.S. EPA Petition for Declaratory Order – Surface Transportation Board, Docket No. FD35803**

NATURE OF CASE: On January 24, 2014, EPA filed a petition with the Surface Transportation Board (STB), which primarily regulates railroads, for an order determining whether SCAQMD Rules 3501 and 3502 would be preempted if EPA approved them into the SIP. The railroads argue that these rules, which limit idling to 30 minutes in certain cases, and required simple records of events exceeding 30 minutes, are preempted by the Interstate Commerce Commission Termination Act (ICCTA).

STATUS: *(No change from last month.)* Any interested person may file a reply with the STB within 20 days (February 13, 2014). We filed pleadings supporting our position and obtained support from Communities for Environmental Justice, CARB, and the State of Massachusetts, which has a SIP-approved rule applicable to locomotive idling.

On February 26, the STB opened a proceeding giving the parties until March 28 to file further evidence and arguments and until April 14 to file replies. All parties filed additional evidence and/or arguments on March 28. On April 14, the District, CARB, the Railroads, and the Association of American Railroads filed replies. Unexpectedly, the U.S. Department of Transportation—not previously a party—filed “concerns” regarding the District’s Rules. As this was new matter not previously raised, the District requested leave to file a short proposed reply to the DOT filing.

3. CASE: **SCAQMD v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 13-73936**

NATURE OF CASE: Pursuant to the Board’s directive, staff filed a challenge to EPA’s action creating a separate nonattainment area for Morongo lands with a classification of “severe-17” for ozone. SCAQMD is concerned that this gives businesses locating at Morongo a competitive advantage over South Coast Basin facilities so that facilities will preferentially locate there, causing adverse air quality effects downwind in the Coachella Valley.

STATUS: *(No change since last month.)* The parties agreed to participate in the Ninth Circuit Court of Appeals mediation program. There was a mediation conference call held on February 12, 2014, and the parties will hold a call on March 5, 2014. The parties have held two settlement calls and have scheduled a further mediation call for May.

4. **CASE:** **Utility Air Regulatory Group v. U.S. EPA, U.S. Supreme Court Case No. 12-1146 (consolidated with 12-1272, 12-1248, 12-1254, 12-1268, and 12-1269)**

NATURE OF CASE: Various industry groups filed a challenge to EPA's GHG permitting rules, arguing that the Clean Air Act did not authorize EPA to regulate GHGs from stationary sources. The D.C. Circuit Court of Appeals upheld EPA's rules. The U.S. Supreme Court granted review.

STATUS: **(No change since last month.)** Pursuant to prior authorization, SCAQMD joined an amicus brief, together with UCLA Law School's Emmett Center for Climate Change, addressing the practicalities of GHG permitting, our experience so far, and our support for EPA's phased approach to GHG permitting. The case was argued in the U.S. Supreme Court on February 24, 2014.

5. **NEW CASE:** **Friends of the Fire Rings v. South Coast Air Quality Management District and City of Newport Beach, Orange County Superior Court No. 30-2013-00690328-CU-WM-CXC**

NATURE OF CASE: Petitioners challenge the SCAQMD's adoption of amendments to Rule 444 relating to fire rings on the beach. The City of Newport Beach has been added as a "DOE" defendant, since that City has voted to remove about half of the fire rings at Balboa Pier and Corona del Mar. The complaint alleges violation of the Coastal Act, CEQA, the Equal Protection Clause, and numerous provisions of the Health & Safety Code pertaining to the substance and process for the rule amendments. The District was served on December 12, 2013, and the City of Newport Beach on January 2, 2014.

STATUS: **(No change from last month.)** A hearing on Petitioner's motion for Preliminary Injunction, which sought to stay the Board's July 2013 amendments regarding beach burning, was held on January 31, 2014. Orange County Superior Court Judge Judge Robert Moss denied the motion for preliminary injunction, finding that the District had presented adequate evidence to show that wood burning can be harmful to human health and that the amendments allowed the use of charcoal and liquid fuel and did not mandate the specific configuration of the fire rings.

The parties have met and conferred and stipulated to transfer the case to San Diego County pursuant to section 30806 of the Public Resources Code. On March 20, 2014, the court served a notice of transfer to the Superior Court of San Diego County. The District is in the process of completing preparation of the record and

responding to petitioners' requests re the record. Once the record is certified the District and Newport Beach will file their answers to the complaint and the matter will later be set for hearing. Contrary to their prior representation, Petitioners have failed to dismiss their CEQA claim, which is barred by the statute of limitations, so we will be filing a limited demurrer to get rid of that claim.

6. CASE: **Natural Resources Defense Council, Inc., et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 13-70544**

NATURE OF CASE: On February 12, 2013, Natural Resources Defense Council and Communities for a Better Environment filed a lawsuit against EPA challenging its approval of South Coast Air Quality Management District Rule 317, Clean Air Act Non-Attainment Fee. Rule 317 is a local fee rule submitted to address section 185 of the Clean Air Act with respect to the 1-hour ozone standard for anti-backsliding purposes. Rule 317 relies on fees imposed on mobile sources under state law. EPA finalized approval of Rule 317 as an alternative to the program required by section 185 and determined that the District's alternative fee-equivalent program is not less stringent than the program required by section 185.

STATUS: **(No changes since last month.)** EPA's motion to continue the stay pending the San Joaquin lawsuit was denied. The court established the following briefing schedule: the opening brief is due June 9, 2014; the answering brief is due September 8, 2014; the respondents-intervenors' briefs are due September 30, 2014; and the optional reply brief is due October 30, 2014.

7. CASE: **Communities for a Better Environment, et al. v. U.S. EPA, et al., U.S. Court of Appeals, Ninth Circuit, Case No. 13-70167**

BACKGROUND: On January 14, 2013, Communities for a Better Environment (CBE) and California Communities Against Toxics (CCAT) filed a Petition for Review of EPA's final rulemaking that was issued on November 14, 2012. The challenged rulemaking constituted EPA's supplemental, final action to approve a source-specific SIP revision allowing the District to transfer offsetting emission reductions for PM₁₀ and SO_x to the CPV Sentinel Energy Project, a natural gas fired power plant, through the AB 1318 tracking system. EPA first issued a final rulemaking to approve the District's transfer of offsets to the CPV Sentinel Energy Project on April 20, 2011. That rulemaking was challenged by the same Petitioners through a Petition to Review in the Ninth Circuit (Case No. 11-71127). After briefing and oral argument in that case, the Ninth Circuit issued an order remanding the final rule, without vacatur, to EPA on July 26,

2012. This second, final rulemaking is the product of EPA's re-examination of the April 20, 2011 rulemaking.

STATUS:

(No change since last month.) The Board authorized staff to file a motion to intervene on behalf of EPA, which CPV Sentinel and the District have each filed. The court granted both parties' motions. Petitioners' opening brief was filed on February 7, 2014. Respondent's answering brief is due on or before May 7, 2014; and the Intervenor's (CPV Sentinel, LLC and the District) briefs are due on or before June 9, 2014; Petitioners' optional reply is due on or before June 30, 2014.

8. CASE:

Medical Advocates for Healthy Air, et al v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-73386

BACKGROUND:

On October 19, 2012, Petitioners filed a Petition for Review of U.S. EPA's approval of San Joaquin Valley Air Pollution Control District's SIP revision to include SVAPCD's equivalent alternative program to meet the Clean Air Act's section 185(e) requirements triggered by its failure to attain the revoked one-hour ozone standard. EPA based its approval on its determination that the Clean Air Act allows for such an equivalent program so long as it is not less stringent than straight section 185(e) compliance.

STATUS:

(No change since last month.) With your Board's approval, we as well as SJAPCD and National Environmental Development Association's Clean Air Project moved to intervene in this case. All three requests were granted. All briefing on the case has been completed and numerous other associations have filed amicus briefs. EPA published approval of our section 185(e) equivalent program on December 14, 2012. Different petitioners filed a challenge to SCAQMD's Rule 317 on January 14, 2013. The case is no longer stayed. All briefing has been completed, and the parties await a hearing date.

9. CASE: **People ex rel. Imperial County APCD, et al. v. United States Department of Interior, et al., Ninth Circuit Court of Appeals Case No. 12-55856**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Imperial County APCD's appeal of a federal district court decision holding that it lacked standing to sue the U.S. Department of the Interior under the National Environmental Policy Act and that the federal government had not waived sovereign immunity regarding failure to comply with the "General Conformity" provisions of the Clean Air Act. The lawsuit arose out of a challenge to the approval of a water transfer between Imperial Irrigation District and three water agencies which would result in less agricultural runoff feeding the Salton Sea, and ultimate exposure of dry lakebed which would create substantial PM10 emissions.

STATUS: The District filed a motion to file an amicus brief, along with its proposed brief, on September 19, 2011. Other air districts including San Joaquin Unified AQMD, Sacramento Metro AQMD, Santa Barbara County APCD, and North Coast APCD joined the District's brief. *The Court of Appeals issued its decision on May 19, 2014, holding that the Air District did have standing to sue under both NEPA and the federal conformity requirements of the Clean Air Act. This is an important ruling since under the trial court's decision, it would not be possible to enforce the "general conformity" provisions of the CAA against federal agencies. However, the Court of Appeals also held that the Department of the Interior did not violate either statute. We will advise you if there is any further action, such as a petition for rehearing, in this case.*

10. CASE: **Communities for a Better Environment, California Communities Against Toxics, Desert Citizens Against Pollution, Natural Resources Defense Council, Inc., and Physicians for Social Responsibility-Los Angeles v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-71340**

NATURE OF CASE: This lawsuit challenges on unspecified grounds EPA's final approval of the 8-hour ozone SIP applicable to the South Coast Air Basin.

STATUS: **(No change from last month.)** The Governing Board at its May 4, 2012 hearing approved filing a Motion to Intervene. The District timely filed a joint motion to intervene with SCAG, which was not opposed by Petitioners or EPA. The motion has been granted. EPA has published a proposed settlement agreement, which calls for the voluntary dismissal of this lawsuit after EPA's publication of its final notice of action on the District's 1-hour ozone plan.

11. CASE: **Medical Advocates for Healthy Air, et al. v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 12-70630**

NATURE OF CASE: This lawsuit challenges EPA's December 30, 2011 determination that the South Coast Air Basin Area, the San Joaquin Valley Area and the Southeast Desert Modified Air Quality Maintenance Area did not attain the now revoked one-hour ozone standard by the deadline for attainment established under the 1990 amendments to the Clean Air Act (76 Fed. Reg. 82,133). Petitioners take issue with the statutory authority under which EPA made those determinations and assert that EPA should have made its finding under section 179(c) of the Clean Air Act, 42 U.S.C. § 7509(c), a section that they claim would require the nonattaining areas to develop new attainment plans for the now revoked one-hour ozone standard.

STATUS: **(No change from last month.)** Your Board granted authorization and the District filed its motion to intervene on behalf of EPA on March 28, 2012. Petitioners opposed the District's motion to intervene and the Court referred the motion and any related filings to the panel assigned to decide the merits of the appeal. San Joaquin Valley Unified Air Pollution Control District's unopposed motion to intervene was granted by the Court. On April 12, 2012, Petitioners and EPA held a telephone conference with the Circuit Mediator. Pursuant to the agreement of the parties, the briefing schedule was vacated and the case was stayed. A mediation conference call was held on January 16, 2014 during which it was reported that San Joaquin's 1-hour ozone plan was adopted and approved by CARB and forwarded to EPA. Based on these representations, the parties have agreed to continue to hold the case in abeyance until EPA issues a final decision on the Valley's 1-hour ozone plan. The court has entered an order to this effect and will schedule a follow-up conference call on June 19, 2014.

12. CASE: **Physicians for Social Responsibility–Los Angeles, et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-70016 (Monitoring)**

NATURE OF CASE: On January 3, 2011, a number of environmental groups filed a challenge in the Ninth Circuit Court of Appeals to EPA's approval of the District's annual air monitoring plan. They argue that EPA should have required SCAQMD to install six (6) air monitors to detect elevated levels of PM2.5 in areas very near heavily traveled roadways. Our position and EPA's is that such monitoring is not required. This is the same issue that was raised in NRDC v EPA, 638 F.3d 1183 (9th Cir. 2011) (conformity case) in which the petitioners were unsuccessful.

STATUS: (No change since last month.) Both EPA and the District have filed their opposition briefs, and Petitioners have filed their reply brief. EPA has published its final rule on PM-2.5 and has required near-road monitoring. We are awaiting a hearing date from the court.

13. CASE: **Physicians for Social Responsibility et al. v. EPA, Ninth Circuit Court of Appeals Case No. 12-70079 (PM2.5)**

NATURE OF CASE: On November 9, 2011, the U.S. EPA approved in part and disapproved in part the 2007 PM2.5 SIP (including elements from SCAG, SCAQMD, and CARB) which is part of the 2007 AQMP. The only part disapproved was the contingency measures. Physicians for Social Responsibility and others filed a challenge to EPA's approval in the applicable Court of Appeals. The Board authorized staff to file a motion to intervene to help EPA defend the case and that motion (filed jointly with SCAG) was granted. Environmental petitioners raised several issues in opposition to the EPA's proposed SIP approval, including issues regarding the enforceability of control measures, and lack of near-roadway monitoring.

STATUS OF CASE: (No change from last month.) The Ninth Circuit mediator held a conference with all the parties on February 21, 2012. Following discussions, the mediator set a schedule for the petitioners to submit a proposal to settle the case to defendants and intervenors by March 20. The mediator set a further conference call for April 13 to determine whether further discussion would be fruitful or whether a briefing schedule should be established. Petitioners provided a proposal which would have called for staff to agree to near roadway monitoring for PM2.5, to adopt new contingency measures which would be developed through mediation with the petitioners, and to agree to EPA imposing sanctions on the region if CARB does not adopt all its control measures by January 1, 2014. Staff concluded that this proposal was unacceptable and so notified the Petitioners. Petitioners' Opening Brief was filed on July 13, 2012; EPA's Respondent's brief was filed on October 26, 2012; and our Joint Intervenor's brief was filed on November 16, 2012. Petitioners' Reply Brief was filed on February 4, 2013. We are awaiting the scheduling of oral argument.

14. CASE: **Communities for a Better Environment, California Communities Against Toxics, v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-72358**

NATURE OF CASE: On July 24, 2012, Communities for a Better Environment and California Communities Against Toxics filed a Petition for Review of EPA's final rulemaking approving a revision to the District's portion of the California State Implementation Plan that incorporates Rule 1315 – Federal New Source Review Tracking System. The approved SIP revision establishes the procedures for demonstrating equivalency with federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific federal nonattainment pollutants and their precursors.

STATUS: **(No change from last month.)** The Board authorized staff to file a motion to intervene on behalf of EPA. Our motion to intervene was filed on August 17, 2012 and on August 21, 2012 the court issued an order granting the District's motion. The opening brief was filed by Petitioners on November 15, 2012. EPA's answering brief was filed by February 20, 2013 and the District's intervenor brief was filed on April 3. Petitioners' optional reply brief was filed on June 7, 2013. We are awaiting the scheduling of oral argument.

15. CASE: **California Building Industry Ass'n v. Bay Area Air Quality Management District, California Court of Appeal, First Appellate District, Case Nos. A135335 & A136212**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Appellant Bay Area AQMD. In 2010, the Bay Area AQMD adopted a series of thresholds of significance ("Thresholds") for greenhouse gases ("GHGs") and toxic air contaminants ("TACs"). In response to the Bay Area's adoption of the Thresholds, the California Building Industry Association ("BIA") filed suit, asserting, among other things, that: (1) adopting the Thresholds was a "project" under CEQA and the Bay Area was thus required to analyze the environmental impacts of adopting the Thresholds; and (2) that the TAC Receptor Thresholds unlawfully required an analysis of the effect of the existing toxic air pollution on the proposed project. The trial court held that the Bay Area's adoption of the Thresholds was a "project" under CEQA, but the court declined to reach the issue of whether the TAC Receptor Thresholds were contrary to CEQA. The Bay Area has appealed the trial court's ruling that adopting the Thresholds is a "project" under CEQA, and BIA has requested that the court of appeal resolve its claim that the TAC Receptor Thresholds violated CEQA.

STATUS: **(No change from last month.)** The California Court of Appeal issued a decision on August 13, 2013. The court held that the promulgation of thresholds of significance by a public agency is itself not a "project" subject to CEQA review. It also held that the

TAC Receptor Thresholds are not facially invalid because they can be used during CEQA review of a proposed project in ways other than analyzing the effect of the pre-existing pollution on the proposed project, such as determining whether the proposed project itself would increase the TACs to a cumulatively considerable level, determining the health risks to students when a school project is located within a specified radius of a source of TACs, or determining whether the project is consistent with the area's general or specific plan. The court declined to decide whether the TAC Receptor Thresholds unlawfully required an analysis of the pre-existing pollution on the proposed project, stating that that discussion is better reserved for a case in which the Thresholds have actually been applied to a proposed project. The CBIA has filed a petition for review. On November 26, 2103, the California Supreme Court granted review of the question of what circumstances under CEQA, if any, requires an analysis of how existing environmental conditions will impact future residents or receptors of a proposed project. We filed an amicus brief in support of BAAQMD on April 16, 2014.

16. CASE: **Friedman Marketing v. SCAQMD, California Court of Appeal, Second Appellate District, Case No. B249836**

NATURE OF CASE: Appellant appeals the lower court's adverse decision granting the SCAQMD's demurrer without leave to amend. Appellant had filed a First Amended Complaint seeking declaratory relief that the SCAQMD could not enforce its Rule 461 against appellant's customers for installing uncertified vapor recovery equipment on the ground that CARB's regulations exempted the equipment from certification. Despite suing CARB, and getting an adverse decision from the court, Petitioner nevertheless sued the District for allegedly improperly enforcing CARB's certification requirement. The court granted the District's demurrer mainly on the ground that Appellant had failed to exhaust its administrative remedies by not completing its application for certification to CARB.

STATUS: *The Court has postponed the hearing to August 7, 2014.*

17. CASE: **SCAQMD v. Harvey Eder, California Court of Appeal, Second Appellate District, Case No. B251627**

BACKGROUND: SCAQMD appeals from the trial court's judgment granting SCAQMD's dismissal for failure to timely file an amended complaint but without prejudice. Mr. Eder had filed a cross-appeal of the judgment granting dismissal. On June 12, 2013, the court sustained the SCAQMD's demurrer with 30 days leave to amend to Mr. Eder's complaint that the SCAQMD was required to include in

its AQMP a requirement to immediately convert the Basin to solar energy. Mr. Eder did not file an amended complaint, and on September 13, 2013, the District moved to dismiss the complaint with prejudice. The court granted the dismissal but without prejudice, effectively allowing Mr. Eder to re-file his complaint.

STATUS:

(No change from last month.) The clerk's transcript was completed on January 23, 2014. Our opening brief was filed February 28, 2014. The court granted Mr. Eder's second request for extension to file his brief. It is now due July 2, 2014.